

Oct 14, 2022

Good afternoon,

I'm sending this email out to those who submitted testimony, in writing or through the media, as well as those who signed up to provide oral testimony, on OCCL's proposed revisions to Chapter 13-5, Conservation District Rules

As most of you have heard, this morning's Board of Land and Natural Resources meeting was cancelled due to a Sunshine Law issue, not related to any one particular submittal.

The Office of Conservation and Coastal Lands had hoped to use the meeting to initiate a series of consultations and informational briefings before heading out to formal public hearings on the proposed amendments.

We are assuming that there is going to be a robust discussion, and that there will be changes to the proposal before formal hearings start.

In general, our preference is to gather public comments and consider them in a public forum. However, there were some comments that I was hoping to address in this morning's meeting, and to integrate them into the working draft immediately. These are:

1. The need for public consultation. I concur 100% that we need to do public consultation before formal public hearings start. Our intention of using a Board meeting as the kick-off was to notify the public that we were proceeding, to provide greater transparency in the process. We got the public's attention, though not quite in the way I anticipated.

We have begun compiling the comments already received on our website at <https://dlnr.hawaii.gov/occl/rules/>. We will keep this updated as we move forward.

2. Objections to deleting the word "welfare" from the phrase "public health, safety, and welfare." We will revert to the original phrase throughout the document.
3. Questions regarding the transition process. In the past when new rules were adopted any application that was in process would be processed under the old rules. We will add language making this explicit.
4. Clarification regarding "unmanaged hazardous situations." Here I just have a comment to help people navigate the proposed rules. Our intent is to stop considering applications for coastal erosion under the emergency-permit rules, as chronic erosion has been occurring for decades. Emergency permits will be reserved for incidents: named storms, tsunamis, landslides, floods, eruptions, etc.
5. HAR 13-5-3 regarding Appeals is inconsistent with HRS 183C-3. We concur. At the end of this email are the current rules, the proposed amendments in the 10-14-22 draft, and our proposed correction.

There were other valuable comments in the testimony we have received so far. Our preference will be to discuss those in an open and public forum. There were other comments regarding consistency with HRS that we will need to research further.

I will keep our website updated as we schedule information hearings and public consultations, and as we receive more comments. We can move forward with these; we only need Board and Governor approval for the formal public hearings.

We will prepare an updated draft of the proposal containing at least the above changes prior to conducting public briefings and consultations.

Aloha

S Michael Cain

Michael Cain

Current rules

13-5-3 Appeals. Any final order of the department or board based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found. [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

10-14-22 Draft

§13-5-3 Appeals. Any final order of the department or board based upon this chapter may be appealed to the ~~[circuit]~~ [environmental](#) court of the circuit in which the land in question is found. [The appeal shall be in accord with chapter 91, HRS and the Hawaii rules of civil procedure.](#) [Eff 12/12/94; am and comp 12/05/11; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

Proposed correction

13-5-3 Appeals. Any final order of the department or board based upon this chapter may be appealed to the ~~[circuit]~~ [environmental](#) court of the circuit in which the land in question is found~~[-], except that any contested case under chapter 183, HRS, and any preliminary ruling that is of the nature defined by section 91-14(a), HRS, shall be appealed upon the record directly to the supreme court for final decision.~~ [The appeal shall be in accord with chapter 91, HRS and the Hawaii rules of civil procedure.](#) [Eff 12/12/94; am and comp] (Auth: HRS §183C-3) (Imp: HRS §183C-8)